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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY OLIVER, II,

Case No. C 07 02460 JL

Plaintiff,

**DECLARATION OF BENJAMIN
NISENBAUM IN SUPPORT OF
PLAINTIFF'S MOTION AND MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS BY DEFENDANT CITY**

vs.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation; HEATHER FONG, in
her capacity as Chief of Police for the CITY
AND COUNTY OF SAN FRANCISCO; JESSE
SERNA, individually, and in his capacity as a
police officer for the CITY AND COUNTY OF
SAN FRANCISCO; and, San Francisco police
officers DOES 1-25, inclusive,

Time: 9:30 a.m.
Date: March 26, 2008
Courtroom: F

Honorable Magistrate Judge James Larson

Defendants.

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I, Benjamin Nisenbaum, hereby declare:

1. I am attorney of record for Plaintiff. This declaration is submitted in support of Plaintiff GREGORY OLIVER, II's Motion to Compel Production of Documents by Defendant CITY in the above-captioned matter.

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Request for Production of Documents to Defendant CITY (set one), pertaining to the instant matter.

1 3. Attached hereto as Exhibit B is a true and correct copy of Defendant CITY's Responses to
2 Plaintiff's Request for Production of Documents, pertaining to the instant matter.

3 4. Attached hereto as Exhibit C is a true and correct copy of the declaration of Lt. Michael
4 Stasko Re Plaintiff's Discovery Demands, executed on November 26, 2007, pertaining to the instant
5 matter

6 5. Attached hereto as Exhibit D is a true and correct copy of correspondence dated November
7 16, 2007, from the undersigned to David Newdorf, Deputy City Attorney, who represents Defendants
8 CITY and SERNA in *Maestrini v. City and County of San Francisco, et al.* Northern District Case
9 No. C 07 2941 PJH, in which Defendant SERNA is a named defendant.

10 6. Throughout the course of litigation in the instant matter, Plaintiff's counsel has been in
11 contact with former Defendant's counsel Ronald Flynn, Deputy City Attorney. Deputy City Attorney
12 Scott Wiener has recently replaced Mr. Flynn as Defendants' counsel in the instant matter. I have
13 spoken with Mr. Flynn on several occasions regarding the instant discovery dispute. Mr. Flynn
14 informed me that David Newdorf, Deputy City Attorney would be handling the discovery disputes in
15 the instant matter, *Maestrini*, and a third civil case in which Defendant Officer SERNA and
16 Defendant CITY are named Defendants, *Hwang v. City and County of San Francisco, et al.*, Northern
17 District Case No. C 07 2718 MMC. We informally agreed to conduct the *Monell* component of each
18 of the three cases in which Plaintiff's counsel represents Plaintiff's against Defendant Officer
19 SERNA together. To that end, I have spoken with Mr. Newdorf on several occasions to meet and
20 confer on the instant discovery dispute. After sending Mr. Newdorf the November 16, 2007 letter
21 addressed to Mr. Newdorf, addressing the same concerns in the *Maestrini* case as those presented in
22 the instant discovery dispute. Despite the passage of time and several telephone calls, and one letter
23 from Mr. Newdorf indicating his belief that this dispute can be resolved, no action toward resolution
24 has occurred.

25 7. Attached hereto as Exhibit E is a copy of Mr. Newdorf's correspondence in response to my
26 November 16, 2007 meet and confer letter in *Maestrini*. In spite of several telephone calls, Mr.
27 Newdorf has had no further substantive discussions with me regarding the pending discovery dispute.
28 At this point, three months after Mr. Newdorf indicated a discovery motion would be unnecessary, I

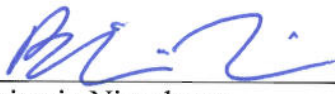
1 am concerned that further delay in resolving this discovery dispute will substantially prejudice all
2 three Plaintiffs in the three pending matters against Defendant Officer SERNA.

3 8. Attached hereto as Exhibit F is a true and correct copy of the Complaint filed in *Esther*
4 *Hwang v. City and County of San Francisco, et al*, Northern District case no. C 07 2718 MMC
5 (initially assigned to Magistrate Judge Brazil).

6 9. Attached hereto as Exhibit G is a true and correct copy of the Complaint filed in *Marco*
7 *Maestrini v. City and County of San Francisco, et al.* case no. C 07 2941 PJH.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct of my personal knowledge, except where stated on information and belief, and to
10 those matters I am informed and believe them to be true. If called as a witness, I would competently
11 testify to those matters stated herein.

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13 Executed February 20, 2008 at Oakland, California.

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15 /s/ 
16 Benjamin Nisenbaum
17 Attorney for Plaintiff
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